

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LAMONT HEARD,  
Plaintiff,

No. 2:05-cv-231

-v-

HONORABLE PAUL L. MALONEY

PATRICIA CARUSO, ET AL.,  
Defendants.

ORDER DENYING MOTION TO ALTER OR AMEND JUDGMENT

Plaintiff Heard, a prisoner under the control of the Michigan Department of Corrections (MDOC), filed a motion to alter or amend judgment under Rule 59(e) of the Federal Rules of Civil Procedure. (Dkt. No. 344.)

Plaintiff earlier filed a motion for transfer of venue. The prison where Plaintiff is located is in the Upper Peninsula. At his trial, Plaintiff intends to call several witnesses who are located in Detroit, Michigan. Plaintiff sought to transfer his trial to Detroit for the convenience of his witnesses. The transfer would also minimize or eliminate the witness fees Plaintiff would otherwise be required to pay. The court denied Plaintiff's motion. The court noted, *inter alia*, Plaintiff had not indicated whether any of his proposed witnesses would be willing to appear voluntarily, without the need for a subpoena. Plaintiff now requests the court alter or amend the order denying his motion to transfer venue so that he may contact the witnesses to ascertain whether they would be unwilling to testify without a subpoena. In his prayer for relief, Plaintiff requests the court order (1) the Defendants arrange for Plaintiff to call each witness because the witnesses do not respond when he writes them, (2) extend time to seek witness answers, or (3) allow Plaintiff's witnesses to testify at trial via video conference or telephone if they are not willing to appear in person.

Plaintiff has not established any basis for granting the relief requested. Under Rule 59(e), a district court may reconsider the judgment entered and may grant the motion for any of four reasons: (1) an intervening change in the controlling law, (2) newly discovered evidence, (3) to correct a clear error of law, or (4) to prevent manifest injustice. *GenCorp, Inc. v. American Int'l Underwriters*, 178 F.3d 804, 834 (6th Cir. 1999). Plaintiff has not alleged a change in the law, new evidence, or an error in law or fact. Plaintiff has not demonstrated the sort of exceptional or extraordinary circumstances to justify altering the earlier order. The court has already concluded that the balance of factors weigh against transfer of venue and therefore Plaintiff cannot establish that the relief requested is necessary to prevent manifest injustice.

Plaintiff's motion is **DENIED. IT IS SO ORDERED.**

Date: May 26, 2010

/s/ Paul L. Maloney  
Paul L. Maloney  
Chief United States District Judge